

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JAMES M. DAILEY,

Petitioner,

v.

Case No. 8:19-cv-2956-T-02AAS

SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS
and ATTORNEY GENERAL, STATE
OF FLORIDA,

Respondents.

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

This matter is before the Court on James Dailey’s 28 U.S.C. § 2254 Petition for a Writ of Habeas Corpus. Dkt. 2. The only ground states: “The Florida Clemency Process Particularly as Applied to James Dailey Fails to Act as the Fail Safe Guaranteed by *Herrera v. Collins* and is so Arbitrary it Violates the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.” *Id.* The procedural and factual history of this matter have been discussed at length in *Dailey v. Sec’y, Fla. Dep’t of Corr.*, No. 8:07-cv-01897-T-02AAS (M.D. Fla).

“Petitions under § 2254 cannot be brought to challenge the process by which clemency decisions are made when issuance of a writ would not actually or

impliedly invalidate a sentence.” *Valle v. Sec’y, Fla. Dep’t of Corr.*, 654 F.3d 1266, 1267 (11th Cir. 2011); *see also Davis v. Scott*, No. 8:14-CV-01676-T-27TB, 2014 WL 3407473, at *2 (M.D. Fla. July 10, 2014). Mr. Dailey is challenging the constitutionality of Florida’s clemency proceedings; this claim is not cognizable in a habeas proceeding under § 2254.

Accordingly, the Petition for Writ of Habeas Corpus, Dkt. 2, is dismissed. As this claim was improperly filed under § 2254, Petitioner cannot establish the requirements for a certificate of appealability and the Court declines to issue one. The Clerk is directed to close the case.

DONE AND ORDERED at Tampa, Florida, on December 5, 2019.

/s/ William F. Jung
WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

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Counsel of Record